Key Themes in Growth Management Act Case Law in the Central Puget Sound Region

by
Joseph W. Tovar, AICP
Central Puget Sound Growth Management Hearings Board
State of Washington

1. Capital Facilities Element (CFE)

- A Capital Facilities Element must include all facilities that meet the definition of public facilities set forth at RCW 36.70A.030(12). All facilities included in the CFE must have a minimum standard (LOS) clearly labeled as such (i.e., not "guidelines" or "criteria"), must include an inventory and needs assessment and include or reference the location and capacity of needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c)). [T]he CFE must explicitly state which of the listed public facilities are determined to be "necessary to support development" and each of the facilities so designated must have either a "concurrency mechanism" or an "adequacy mechanism" to trigger appropriate reassessment if service falls below the baseline minimum standard. *McVittie v. Snohomish County* ***[McVittie VI],*** CPSGMHB Case No. 00-3-0002, Final Decision and Order (**FDO**), July 25, 2001, at 17.

2. Agricultural Resource Lands

- [T]he GMA ... imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. *Green Valley, et al., v. King County* ***[Green Valley]***, CPSGMHB Case No. 98-3-0008c, FDO, July 29, 1998, at 16.
- Land use plans and development regulations that allow parcels of designated agricultural resource lands to be used for active recreation uses and supporting facilities does not assure the conservation of those lands for the maintenance and enhancement of the agricultural industry. *Green Valley*, FDO, at 19.
- "De-designation" of agricultural lands . . . may only occur if the record shows demonstrable and conclusive evidence that the Act's definition and criteria for designation are no longer met. The documentation of changed conditions that prohibit the continued designation, conservation and protection of agricultural lands would need to be specific and rigorous. If such a de-designation were challenged, it would be subject to heightened scrutiny by the Board. *Grubb v. City of Redmond* ***[Grubb]***, CPSGMHB Case No. 00-3-0004, FDO, August 11, 2000, at 11.

3. Critical Areas

- [The GMA] requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the values and functions of such ecosystems must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the value and functions of such ecosystems within a watershed or other functional catchment area. *Tulalip Tribes v. Snohomish County* ***[Tulalip]***, CPSGMHB Case No. 96-3-0029, FDO, January 8, 1997, at 13.

4. Urban Growth Areas (UGAs)

- "The Board, in interpreting RCW 36.70A.110 in conjunction with the remainder of the GMA, has concluded that counties must "show their work" when designating UGAs." [T]he actions of the local jurisdiction are presumed valid; however, when challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. The Board will continue to adhere to the requirement that counties must "show their work" when designating UGAs and affirms its prior decisions on this question. *KCRP, et al., v. Kitsap County* ***[Kitsap Citizens]***, CPSGMHB Case No. 01-3-0019c, FDO, May 9, 2001, at 13. Footnotes omitted.

5. Public Participation

- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change… under the facts of this case, the Board concludes that the opportunity for review and comment on the proposed revisions to the [plan] was not reasonable. *Andrus v. City of Bainbridge Island* ***[Andrus]***, CPSGMHB Case No. 98-3-0030, FDO, March 31, 1999, at 11.
- At the heart of Washington's approach to planning are: (1) the central role of adopted local government *policy* in decision-making and (2) the duty of policy makers (i.e., the legislative bodies of cities and counties) to provide opportunities for *public participation* in the policy-making process. To inappropriately truncate or eliminate the public's opportunity to participate in the making of local government policy would fly in the face of one of the Act's most cherished planning goals and separate the "bottom up" component of GMA planning from its true roots – the people. *McVittie v. Snohomish County* ***[McVittie V],*** CPSGMHB Case No. 00-3-0016, FDO, April 12, 2001, at 14. Footnotes omitted.
- [T]he Board draw[s] the following conclusions about the public participation requirements of the Act:
  - The public participation **goal** provisions (RCW 36.70A.020(11)) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
  - The public **notice** requirements (RCW 36.70A.035) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
  - Some degree of **public participation** (RCW 26.70A.130(2)(a) or (b)) is required **prior to** adoption of **any** plan amendment regardless of duration or urgency.
  - Public participation (RCW 36.70A.140) is required **prior to** the adoption or amendment of **any** permanent development regulation.
  - The **only** instance where **post adoption** public participation is allowed is when temporary or interim development regulations (RCW 36.70A.390) are adopted or amended.

  McVittie V, at 17.

6 . Counties as Regional Governments

- A long term purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area so that urban governmental services are provided [primarily] by cities and rural and regional services are provided by counties. Within the span of GMA plans, urban growth is to occur primarily within the boundaries of incorporated cities, while counties are to become divested of urban local government service delivery responsibilities and invested with responsibilities for regional policy making and service delivery. *City of Snoqualmie, et al., v. King County* ***[Snoqualmie]***, CPSGMHB Case No. 92-3-0004, FDO, March 1, 1993, at 9. Footnotes omitted.

- ...[counties] may allocate population and employment to cities...With responsibility for regional coordination of comprehensive plans in conformance with the planning goals, a county must be capable of directing urban growth to areas that are already urban in character, including cities. Because urban growth consists of people and jobs, the county is therefore charged with authority to undertake a task that is essentially an allocation of population and employment. *City of Edmonds and City of Lynnwood v. Snohomish County* ***[Edmonds]****,* CPSGMHB Case No. 93-3-0005, FDO, October 4, 1993, at 27. Footnotes omitted.

7. Local Areas of More Intensive Rural Development (LAMIRDs)

- The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDS. The limit is unique to each …[as] established by the conditions that existed on July 1, 1990. *Burrow v. Kitsap County****[Burrow]****,* CPSGMHB Case No. 99-3-0018, FDO, March 29, 2000, at 19.
- As to the question of the range of permitted uses, the . . . GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than the specific businesses. *Id.*

8. Cities as the focus of urban growth

- [T]he Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. *Hensley v. City of Woodinville* ***[Hensley]****,* CPSGMHB Case No. 96-3-0031, FDO, February 25, 1997, at 9. Footnote omitted.
- [T]he GMA requires every city to designate all lands within its jurisdiction at appropriate urban densities... When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these exceptional circumstances, the resulting residential density will be deemed an appropriate urban density. *LMI v. Woodway* ***[LMI]****,* CPSGMHB Case No. 98-3-0012 FDO, January 8, 1999, at 23-25.

9. Neighborhood Planning

- Any provision or policy of a neighborhood plan that purports to guide land use decision-making (including subarea or neighborhood plans including land use, capital facility and transportation planning) must be incorporated into the jurisdiction's comprehensive plan to be implemented pursuant to Chapter 36.70A RCW. *West Seattle Defense Fund v. City of Seattle* ***[West Seattle IV]****,* CPSGMHB Case No. 96-3-0033, FDO, March 24, 1997, at 11.
- The GMA requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas — while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." *Benaroya v. City of Redmond* ***[Benaroya]****,* CPSGMHB Case No. 95-3-0072, FDO, March 25, 1996, at 21.

10. Essential Public Faculties (EPFs)

- [A] local government plan may not, through policies or strategy directives, effectively preclude the siting or expansion of an EPF, including its necessary support activities. *Port of Seattle v. City of Des Moines* ***[Port I]***, CPSGMHB Case No. 97-3-0014, FDO, August 13, 1997, at 8.

11. Regional physical form

- The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. *Bremerton, et. al, v. Kitsap County* ***[Bremerton]***, CPSGMHB Case No. 95-3-0039c, FDO, October 6, 1995, at 28. Footnote omitted.
- This region's unique circumstances make the compact urban development model even more compelling, as evidenced by its adopted regional growth management strategy, *Vision 2020*, which states that "the intent of the strategy is to promote a regional urban form characterized by compact, well defined communities framed by a network of open spaces and connected by new transit lines and ferries." *Vision 2020*, at 20, cited in *Bremerton*, FDO, at 29.

12. The Nature of Planning under the GMA

- [T]he decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the [GMA] planning goals to the policy documents of counties and cities (such as Countywide Planning Policies . . . and comprehensive plans), then between certain policy documents (such as from CPPs to . . . comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. *Aagaard, et al., v. City of Bothell* ***[Aagaard]***, CPSGMHB Case No. 94-3-0011, FDO, February 21, 1995, at 6.
- In an early case, the Board determined that plans are not development regulations. Comprehensive plans do not control the issuance of permits nor directly control the use of land. Rather, comprehensive plans are directive to development regulations and capital budgeting decisions. *McVittie V*, FDO, at 14. Footnotes omitted.